

Message

From: Chalfant, Mark [Chalfant.Mark@epa.gov]
Sent: 2/20/2019 10:54:08 PM
To: Lindsay.Cardner@denvergov.org
CC: Aviles, Jesse [Aviles.Jesse@epa.gov]
Subject: [EXTERNAL] RE: Forney Museum

Lindsay,

I hope this email finds you well. Jesse asked me to respond to Andrew's question below, but I didn't want to overstep. Here's my response, if you care to pass it onto your clients. Thanks, Mark

Jesse Aviles asked me to respond to your question about CERCLA and innocent landowners. The EPA website at <https://www.epa.gov/enforcement/innocent-landowners> contains valuable information and guidance concerning the "innocent landowner" defense to Superfund liability. In general, entities that acquire property and had no knowledge of the contamination at the time of purchase may be eligible for the "innocent landowner" (ILO) defense to Superfund liability if they conducted all appropriate inquiries (AAI) prior to purchase and complied with other pre- and post-purchase requirements. I would encourage you to refer the party to EPA's website for more information.

Mark A.R. Chalfant

Senior Enforcement Attorney | Office of Enforcement, Compliance and Environmental Justice | U.S. EPA Region 8
Work: 303.312.6177 | Fax: 303-312-6953 | chalfant.mark@epa.gov

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From: Aviles, Jesse
Sent: Wednesday, February 20, 2019 2:07 PM
To: Ross, Andrew - DEH Environmental Project Manager <Andrew.Ross@denvergov.org>; Chalfant, Mark <Chalfant.Mark@epa.gov>
Cc: Edewaard, Kara - DEH CE2267 Environmental Public Health Analyst <Kara.Edewaard@denvergov.org>
Subject: RE: Forney Museum

Hello Andrew:

I'm forwarding your innocent landowner question to Mark. Regarding the ASARCO money, the 2008 AOC between Denver and EPA established the hierarchy of funds disbursement. The text is in item 88. Below is the text.

88. Reimbursement from ASARCO Bankruptcy Settlement Funds. EPA has filed a claim for Past and Future Response Costs in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, In Re: ASARCO LLC, et al., Case No. 05-21207-Cll. Respondent has filed a claim in the same proceeding for costs incurred and to be incurred at the Site. The United States has reached a tentative settlement with ASARCO for the Site. If the United States secures payment from ASARCO, Denver may seek reimbursement of eligible costs pursuant to the process established in Section XX (Disbursement of Special Account Funds).

Contingent upon receipt of payment from ASARCO, \$1,377,695 of funds received from ASARCO, plus any interest accrued on such amount as provided for in the settlement agreement between the United States and ASARCO or the Reorganization Plan approved by the bankruptcy court, shall be applied to VB/I70 OU2 Site costs in accordance with the following priority schedule.

- a. First priority shall repay EPA's Past Response Costs at the Site.
- b. Second priority shall reimburse EPA for its oversight costs relating to Denver's work in performing the RI/FS.
- c. Third priority shall pay Denver's costs in conducting the RI/FS at the Site.
- d. Fourth priority shall reimburse EPA for its oversight costs relating to any RD/RA work at the Site.
- e. Fifth priority - if any special account funds remain after all EPA costs have been reimbursed, Denver may apply for funds to pay for RD/RA and O&M work related to the Site.

Let me know if you have other questions.

Jesse

From: Ross, Andrew - DEH Environmental Project Manager <Andrew.Ross@denvergov.org>
Sent: Tuesday, February 19, 2019 10:43
To: Aviles, Jesse <Aviles.Jesse@epa.gov>
Cc: Edewaard, Kara - DEH CE2267 Environmental Public Health Analyst <Kara.Edewaard@denvergov.org>
Subject: Forney Museum

Jesse,

My presentation to the Forney Museum Board of Directors went well. They had reasonable questions and it went fine.

I was unable to answer a few questions that came up about their ability to seek damages from the previous landowners. Forney bought the property in 1998 and the NPL was in 1999. I am guessing that Forney never filed for the "innocent landowner" status with EPA. Is it too late for them to get the innocent landowner status? And, is there any money left in the ASARCO Trust that could be set aside for future redevelopment of the non-Denver property owners in OU2?

Thanks, Andrew

Andrew Ross

Environmental Projects Manager
[Department of Public Health & Environment](#)
Environmental Quality | City and County of Denver
PHONE: 720-865-5458 | CELL: 720-272-4414
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